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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3361 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KESHAVLAL BHALABHAI

Versus

STATE OF GUJARAT

Appearance:

None appeared for Petitioner

MR SK PATEL, AGP. for Respondent No. 1

RULE SERVED for Respondent No. 2

None present for Respondent No. 3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 06/02/2001

ORAL JUDGEMENT

1. The petitioner was admittedly unemployed in or about 1982. The Government of India had evolved a scheme for free allotment of land to persons residing in rural areas for the purpose of constructing a residential unit. Thereafter, the said scheme stood transferred to the State Government and the State Government modified and adopted such scheme laying down various criteria for the purpose of being eligible to plot of land under the said scheme.

2. The petitioner made an application for allotment of land in the year 1982 but as the said application was incomplete it was rejected in the meeting of Land Allotment Committee on 1.9.1982. The petitioner, it appears applied for reconsideration after submitting various details and the committee took up the matter and vide resolution dated 23.12.1987 allotted a plot of land to the petitioner under the scheme. In pursuance of such resolution, the petitioner ultimately was actually put in possession of plot of land on 10.1.1991 and Sanad was accordingly granted at that point of time. When the sanad was granted number of terms and conditions including condition that construction should be completed within a period of two years was imposed upon the petitioner. However, admittedly the petitioner had not commenced construction on the aforesaid plot of land. The petitioner made an application for change on 19.2.1996 whereby it was pointed out that the plot originally allotted to him in 1987 was uneven and abutting on road. It was therefore submitted that instead of this originally allotted plot of land the petitioner should be allotted another plot of land.

3. This application for change of plot was considered positively and on 7.1.1997 another plot bearing No.39 was allotted to the petitioner and once again with a stipulation that the construction of the residential premises should be completed within a period of two years. In pursuance of this decision of 7.1.1997 the petitioner approached the Talati seeking permission to commence construction and accordingly the plan was approved and the Talati granted permission to commence construction on 28.2.1997.

4. When the petitioner brought construction material to the site viz. plot no.39 an objection came to be raised by two persons viz. Vankar Jayantibhai Kacharabhai and Vankar Amratbhai Gokalbhai to the effect that they had already been allotted the said plot of land. On ascertaining the facts and record a panchnama

was drawn by respondent no.3 as it was found that admittedly plot no.39 which was allotted to the petitioner had already been allotted to the said two persons. In view of this situation on 28.8.1998 the District Land Committee summoned the petitioner and the two other persons to resolve the dispute. It transpires from the record that the Land Allotment Committee originally tried to impress upon the other two persons to give up the said plot of land in favour of the petitioner. However, the said two persons did not accede to this request and therefore ultimately vide resolution no.4 dated 28.8.1998 the committee decided to cancel allotment of the said plot of land both to the petitioner as well as Amratbhai Gokalbhai Vankar. It is pertinent to note at this stage that by the same resolution time for construction was extended in case of Jayantibhai Kacharabhai Vankar.

5. This resolution no.4 dated 28.8.1998 of the said Land Allotment Committee cancelling the allotment to the petitioner was approved by respondent no.3, Taluka Development Officer vide his communication dated 21.9.1999. The petitioner being aggrieved from the aforesaid decision went in appeal before the District Development Officer who confirmed the action of the Land Allotment Committee as well as the Taluka Development Officer vide his order dated 15.1.1999.

6. On 29.1.1999 the petitioner approached the Addl. Secretary, Panchayat and Gramgruh Department seeking intervention in the matter and terming the said application as Revision Application. The Secretary did not deal with the said application for quite sometime and hence the petitioner was constrained to approach this Court vide SCA No.1713 of 2000. This Court, on 27.1.2000 directed the Secretary to expeditiously deal with the said application and decide the revision application within time bound programme. Accordingly, the said application was taken up for consideration and by order dated 31.3.2000 (Annexure "G") the application has been rejected. It is this order along with the order of the Taluka Development Officer (Annexure "E") and of the District Development Officer (Annexure "F") which are under challenge in this petition.

7. Having gone through the petition and the annexed orders as well as other documents we find that this petition requires to be allowed. Undisputedly when the petitioner was originally allotted a plot of land vide resolution in 1987 he fulfilled the necessary criteria laid down in the scheme. The petitioner was unemployed

at that time. He was resident of village Mandali, Taluka Kheralu, District Mehsana and did not have a residential house either in his name or in the name of any of his family members. On the basis of the application and the details submitted by him he was allotted a plot of land. In 1996 when the petitioner applied for change of the plot of land the same was admittedly taken up for consideration and ultimately plot no.39 was allotted to him in substitution of the plot originally allotted to him in 1997. Therefore, in 1997 when plot no.39 was allotted by way of substitution admittedly the default on behalf of the petitioner of not having carried out and completed construction within a period of two years from the date of allotment was taken into consideration and stood condoned, as otherwise, there was no question of making allotment by way of substitution and the petitioner's application for substitution could have been rejected only on this limited ground.

8. The Land Allotment Committee, Taluka Development Officer, District Development Officer as well as first respondent all have taken into consideration the fact that the petitioner took up employment in 1988 as Junior Assistant with Gujarat Electricity Board. On the basis of this fact the authorities have stated that the petitioner did not fulfill eligibility criteria and it is on the basis of this that the cancellation of original allotment is sought to be justified. Respondent No.1 was aware of this fact situation and that is why in her order dated 31.3.2000 (Annexure "G") has sought to buttress the order of the Land Allotment Committee as well as the Taluka Development Officer and the District Development Officer by stating that "when you applied for change of plot you did not fall within the category of beneficiaries under the scheme. Inspite of this, it appears that you did not disclose this fact to the Government and this is a very serious matter." Taking cue from this, the learned Assistant Government Pleader contended that the application for change of plot should be treated as a fresh application and if that be so, the petitioner having withheld the material fact as regards being in service since 1988 the orders made by the respondents were justified. It was further submitted that as the petitioner did not fulfill one of the basic eligibility condition it was not open for the petitioner to approach this Court seeking any relief and as such the Court should not intervene. It was next contended that in view of the fact that the petitioner had not come to the Court with clean hands and that there was no cause of action no relief should be granted to the petitioner.

9. As we have already noted hereinbefore, the allotment of plot no.39 in 1997 was in lieu of the original allotment in 1987. When the original allotment took place in 1987 the petitioner fulfilled all the requirements for being eligible and this remains undisputed even today. In such circumstances, the substitution of the plot in question cannot be said to be a fresh allotment on the basis of fresh application and if this much is clear, it cannot be contended that there was any obligation on the petitioner to make any disclosure. In absence of any obligation it cannot be stated that there was any non disclosure, and in case of absence of any such requirement, viz.obligation and corresponding requirement of disclosure, the petitioner cannot be visited with penalty as is sought to be done in the present case. In so far as the default of non construction within the period of two years is concerned, on the one hand the original default stands condoned by the action of the committee and the respondents when substituted allotment was made, and on the other hand the period of two years had not elapsed in 1998 as the substituted allotment was made in 1997.

10. In view of these circumstances, we find that there is no other reason forthcoming either from the impugned orders or from the facts and material on record to justify the action of cancellation of allotment of plot of land and hence the impugned orders at Annexures "E", "F" and "G" including resolution no.4 dated 28.8.1998 passed by the Land Allotment Committee are hereby quashed. The respondents are directed to allot and give possession of plot of land bearing no.39 in village Mandali, Taluka Khera petitioner. In case the said plot of land bearing no.39 has already been allotted to some other persons in the meantime, another appropriate plot of land having almost similar admeasurement and location may be allotted to the petitioner on imposition of the necessary and regular conditions as regards period of commencement and completion of construction etc.

11. This petition is allowed accordingly. Rule made absolute with no order as to costs.

Sd/-
(D.A.Mehta, J)

m.m.bhatt